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1	ROBERT E. SCHROTH, JR, ESQ. (SBN 212936)		FILED
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4	San Diego, CA 92101-2079 Telephone: (619) 233-7521	SÖTHERN	WEGO TENETS IS SELECTED AND THE SELECT OF CARLIFORN
5	Facsimile: (619) 233-4516	·B'Y	DEPU
6	Attorneys for Plaintiffs, Michael P. Koby,		•
	Michael Simmons, Jonathan W. Supler,		
7	and all others similarly situated		
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9	UNITED STATES DISTRICT COURT		
10	SOUTHERN DISTR	CICT OF CALIFORNIA	f
11	MICHAEL P. KOBY, an individual;) CASE NO.	ļ
12	MICHAEL SIMMONS, an individual;) '09 CV 0 78 U JAH	JMA
13	JONATHAN W. SUPLER, an individual; on behalf of themselves and all others similarly) NACLOLOGINU	
14	situated,	CLASS ACTIO	N .
15	Plaintiffs,	3	, ····
16	Vo) COMPLAINT FOR VIO OF THE FAIR DEBT CO	
17	vs.) PRACTICES A	
18	ARS NATIONAL SERVICES, INC., a California Corporation; and JOHN AND		
19	JANE DOES 1 through 25 inclusive,		
20	Defendants.)	
21		Ĺ	,
22	Digintiffe MICHAEL D VODV ("VOE	RV") and IONATHAN W CITHI	er ("Slidi ed")
23	Plaintiffs, MICHAEL P. KOBY ("KOBY") and JONATHAN W. SUPLER ("SUPLER"), on behalf of themselves and all others similarly situated, by way of Complaint against the		
24		iany situateu, by way of Comp	iami agamsi the
25	Defendants, say:	D A DARKE C	
26	<u>I. PARTIES</u>		
27	1. KOBY is a natural person.		
	2. At all times relevant to this complaint, KOBY is a citizen of Texas and resided in		
28	the City of Katy, Harris County, Texas.		
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- 3. SIMMONS is a natural person.
- 4. At all times relevant to this complaint, SIMMONS is a citizen of Washington and resided in the City of Monroe, Snohomish County, Washington.
 - 5. SUPLER is a natural person.
- 6. At all times relevant to this complaint, SUPLER is a citizen of North Carolina and resided in the City of Raleigh, Wake County, North Carolina.
- 7. At all times relevant to this complaint, ARS NATIONAL SERVICES, INC. ("ARS") is a for-profit corporation existing pursuant to the laws of the State of California. ARS maintains its principal business address at 960 South Andreasen Drive, Suite B, City of Escondido, San Diego County, California.
- 8. Defendants, JOHN AND JANE DOES 1 through 25 inclusive, are sued under fictitious names as their true names and capacities are yet unknown to Plaintiffs. Plaintiffs will amend this complaint by inserting the true names and capacities of these DOE defendants once they are ascertained.

II. JURISDICTION & VENUE

- 9. With respect to Plaintiffs' claims under the FDCPA, jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
 - 10. Declaratory relief is available pursuant to under 28 U.S.C. §§ 2201, 2202.
- 11. Venue is appropriate in this federal district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiffs' claims occurred within this federal judicial district, and because all the Defendants reside in the State of California within the meaning of 28 U.S.C. § 1391(b) and (c).

III. PRELIMINARY STATEMENT

12. Plaintiffs, on their own behalf and on behalf of the class they seek to represent, and demanding a trial by jury, bring this action for the illegal practices of the Defendants who used false, deceptive and misleading practices, and other illegal practices, in connection with their attempts to collect alleged debts from the Plaintiffs and others. The Plaintiffs allege that the Defendants' collection practices violate the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA").

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- 13. Such practices include, inter alia:
 - Leaving telephonic voice messages for consumers, which fail to (a) provide meaningful disclosure of Defendants' identity;
 - (b) Leaving telephonic voice messages for consumers, which fail to disclose that the call is from a debt collector; and
 - (c) Leaving telephonic voice messages for consumers, which fail to disclose the purpose or nature of the communication (i.e. an attempt to collect a debt).
- The FDCPA regulates the behavior of collection agencies attempting to collect a debt on behalf of another. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to a number of personal bankruptcies, marital instability, loss of jobs, and invasions of individual privacy. Congress enacted the FDCPA to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote uniform State action to protect consumers against debt collection abuses. 15 U.S.C. § 1692(a) - (e).
- 15. The FDCPA is a strict liability statute, which provides for actual or statutory damages upon the showing of one violation. The Ninth Circuit has held that whether a debt collector's conduct violates the FDCPA should be judged from the standpoint of the "least sophisticated debtor." Baker v. G.C. Services Corp., 677 F.2d 775, 778 (9th Cir. 1982).
- To prohibit harassment and abuses by debt collectors the FDCPA, at 15 U.S.C. § 16. 1692d, provides that a debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt and names a non-exhaustive list of certain per se violations of harassing and abusive collection conduct. 15 U.S.C. § 1692d(1)-(6). Among the per se violations is the placement of telephone calls without meaningful disclosure of the caller's identity, 15 U.S.C. § 1692d(6).

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- 17. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, outlaws the use of false, deceptive, and misleading collection letters and names a non-exhaustive list of certain per se violations of false and deceptive collection conduct. 15 U.S.C. § 1692e(1)-(16). Among these per se violations are: the failure by debt collectors to disclose in initial oral communications that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent oral communications with consumers that the communication is from a debt collector, 15 U.S.C. § 1692e(11).
- 18. The Plaintiffs, on behalf of themselves and all others similarly situated, seek statutory damages, attorney fees, costs, and all other relief, equitable or legal in nature, as deemed appropriate by this Court, pursuant to the FDCPA and all other common law or statutory regimes. The Plaintiffs, on behalf of themselves and all others similarly situated, request that they and the class members be awarded statutory, common law, or actual damages payable by the Defendants.

IV. FACTS REGARDING KOBY

- 19. KOBY is informed and believes, and on that basis alleges, that sometime prior to September 2008 he allegedly incurred a financial obligation arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and defaulted on that obligation ("Koby Obligation").
 - 20. The alleged Koby Obligation is a "debt" as defined by 15 U.S.C. §1692a(5).
- 21. KOBY is, at all times relevant to this complaint, a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
- 22. KOBY is informed and believes, and on that basis alleges, that sometime prior to September 2008, the creditor of the Koby Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ARS for collection.

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V. FACTS REGARDING SIMMONS

- 23. SIMMONS is informed and believes, and on that basis alleges, that sometime prior to April 2009 he allegedly incurred a financial obligation arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and defaulted on that obligation ("Simmons Obligation").
 - 24. The alleged Simmons Obligation is a "debt" as defined by 15 U.S.C. §1692a(5).
- SIMMONS is, at all times relevant to this complaint, a "consumer" as that term is 25. defined by 15 U.S.C. § 1692a(3).
- 26. SIMMONS is informed and believes, and on that basis alleges, that sometime prior to April 2009, the creditor of the Simmons Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ARS for collection.
 - 27. To date, SIMMONS has not received any written communications from ARS.

VI. FACTS REGARDING SUPLER

- 28. SUPLER is informed and believes, and on that basis alleges, that sometime prior to December 2008 he allegedly incurred a financial obligation arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and defaulted on that obligation ("Supler Obligation").
 - 29. The alleged Supler Obligation is a "debt" as defined by 15 U.S.C. §1692a(5).
- SUPLER is, at all times relevant to this complaint, a "consumer" as that term is 30. defined by 15 U.S.C. § 1692a(3).
- SUPLER is informed and believes, and on that basis alleges, that sometime prior 31. to December 2008, the creditor of the Supler Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ARS for collection.

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VII. FACTS COMMON TO ALL PLAINTIFFS

- 32. ARS collects, and attempts to collect, debts incurred, or alleged to have been incurred, for personal, family, or household purposes on behalf of creditors using interstate commerce or the mails.
 - 33. ARS is a "debt collector" as defined by 15 U.S.C. § 1692a(6).
- 34. Within the one year immediately preceding the filing of this complaint, ARS contacted each of the Plaintiffs via telephone in an attempt to collect their respective alleged debts.
- 35. Within the one year immediately preceding the filing of this complaint, each of the Plaintiffs received from ARS at least one telephonic voice message on their home answering machines and/or cellular telephones ("Messages").
- 36. Each of the Messages was left, or caused to be left, by persons employed by ARS in connection with their attempt to collect a "debt" as defined by 15 U.S.C. §1692a(5).
 - 37. Each of the Messages uniformly failed to:
 - (a) Provide meaningful disclosure of ARS's identity as the caller;
 - (b) Disclose that the communication was from a debt collector; and
 - (c) Disclose the purpose or nature of the communication (i.e., an attempt to collect a debt).
 - 38. Each of the Messages is a "communication" as defined by 15 U.S.C. § 1692a(2).
 - 39. An example of three such Messages are transcribed as follows:

This is Robin calling for Michael Koby, if you could return my call at 800-440-6613; my direct extension is 3171. Please refer to your Reference Number as 15983225. [Received October 14, 2008].

Hey John, uh, it's Mike Mazzouli with ARS National. Umm, there appears to be some documents here in my office, uh, John at this point your involved. Call me as soon as you can. My direct number and direct extension is 800-440-6613; I'm at extension 3697. Thank you. [Received on or about December 23, 2008].

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This is Brian Cooper. This call is for Mike Simmons, I need you to return this call as soon as you get this message 877-333-3880, extension 2571. [Received on April 9, 2009].

- 40. Each of the Messages is false, deceptive, and misleading in that the natural consequence of these communications is to harass, oppress, or abuse the least sophisticated consumer and other persons in violation of the FDCPA.
- 41. Each of the Messages is false, deceptive, and misleading insofar as ARS failed to give meaningful disclosure of its identity, disclose the purpose of its call, or disclose that ARS is a debt collector, thereby circumventing Congress's intent to permit the Plaintiffs to make an informed decision as to whether they wished to speak with a debt collector.
- 42. The Plaintiffs are informed and believe, and on that basis allege, that Defendants, JOHN AND JANE DOES 1 through 25 inclusive, are natural persons and/or business entities all of whom reside or are located within the United States who personally created, instituted and, with knowledge that such practices were contrary to law, acted consistent with and oversaw policies and procedures used by the employees of ARS that are the subject of this complaint. Those Defendants personally control the illegal acts, policies, and practices utilized by ARS and, therefore, are personally liable for all of the wrongdoing alleged in this Complaint.

VIII. POLICIES AND PRACTICES COMPLAINED OF

- It is the Defendants' policy and practice to leave telephonic voice messages for 43. consumers and other persons, such as the Messages, that uniformly fail to:
 - Provide meaningful disclosure of ARS's identity as the caller; (a)
 - Disclose that the communication is from a debt collector; and (b)
 - Disclose the purpose or nature of the communication. (c)
- 44. On information and belief, the Messages, as alleged in this complaint under the Facts Common to All Plaintiffs, number at least in the thousands, all of which uniformly fail to:
 - Provide meaningful disclosure of ARS's identity as the caller; (a)
 - Disclose that the communication is from a debt collector; and (b)
 - Disclose the purpose or nature of the communication. (c)

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IX. CLASS ALLEGATIONS

- 45. This action is brought as a class action. Plaintiffs bring this action on behalf of themselves and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure.
- 46. The Plaintiff Class consists of all persons with addresses in the United States of America who received a telephonic voice message from ARS left after one-year immediately preceding the commencement of this civil action up through and including the date of preliminary class certification, which message failed to meaningfully identify ARS as the caller, disclose that the communication was from a debt collector, or state the purpose or nature of the communication.
- 47. The identities of all class members are readily ascertainable from the records of ARS and those companies and governmental entities on whose behalf ARS attempts to collects debts.
- 48. Excluded from the Plaintiff Class are the Defendants and all officers, members, partners, managers, directors, and employees of ARS, Defendants, and their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.
- 49. The class period is one year prior to the filing of the initial complaint in this action for all claims under the FDCPA and continues up to and including the date of preliminary class certification.
- 50. There are questions of law and fact common to the Plaintiff Class, which common issues predominate over any issues involving only individual class members. Those principal issues are: whether the Defendants' telephonic voice messages, such as the Messages, violate 15 U.S.C. §§ 1692d(6) and 1692e(11).
- 51. The Plaintiffs' claims are typical of the class members, as all are based upon the same facts and legal theories.
- 52. The Plaintiffs will fairly and adequately protect the interests of the Plaintiff Class defined in this Complaint. The Plaintiffs have retained counsel with experience in handling

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27 28 consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiffs nor their attorneys have any interests, which might cause them not to vigorously pursue this action.

- 53. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:
 - Numerosity: The Plaintiffs are informed and believe, and on that basis allege, (a) that the Plaintiff Class defined above is so numerous that joinder of all members would be impractical.
 - (b) Common Questions Predominate: Common questions of law and fact exist as to all members of the Plaintiff Class and those questions predominate over any questions or issues involving only individual class members. The principal issues are: whether the Defendants' telephonic voice messages, such as the Messages, violate 15 U.S.C. §§ 1692d(6) and 1692e(11).
 - **Typicality:** The Plaintiffs' claims are typical of the claims of the class members. (c) The Plaintiffs and all members of the Plaintiff Class have claims arising out of the Defendants' common uniform course of conduct complained of herein.
 - (d) Adequacy: The Plaintiffs will fairly and adequately protect the interests of the class members insofar as Plaintiffs have no interests that are adverse to the absent class members. The Plaintiffs are committed to vigorously litigating this matter. Plaintiffs have also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiffs nor their counsel have any interests which might cause them not to vigorously pursue the instant class action lawsuit.
 - (e) Superiority: A class action is superior to the other available means for the fair and efficient adjudication of this controversy because individual joinder of all members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that

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individual actions would engender. An important public interest will be served by
addressing the matter as a class action, substantial expenses to the litigants and to
the judicial system will be realized, and the potential inconsistent or contradictory
adjudications will be avoided as contemplated by Rule 23(b)(1) of the Federal
Rules of Civil Procedure.

- Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil 54. Procedure is also appropriate in that:
 - The questions of law and fact common to members of the Plaintiff Classes (a) predominate over any questions affecting an individual member; and
 - A class action is superior to other available methods for the fair and efficient (b) adjudication of the controversy.
- 55. Plaintiffs request certification of a hybrid class combining the elements of Rule 23(b)(2) for equitable relief and Rule 23(b)(3) for monetary damages.

X. FIRST CAUSE OF ACTION VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT (AGAINST ALL DEFENDANTS)

- 56. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs of this Complaint.
- 57. Defendants violated the FDCPA. Defendants' violations with respect to the Messages include, but are not limited to, the following:
 - (a) Placing telephone calls without providing meaningful disclosure of ARS's identity as the caller in violation of 15 U.S.C. § 1692d(6);
 - (b) Placing telephone calls without disclosing the nature or purpose of the call in violation of 15 U.S.C. § 1692d(6);
 - Failing to disclose in its initial communication with the consumer that (c) ARS is attempting to collect a debt and that any information obtained will be used for that purpose, which constitutes a violation of 15 U.S.C. § 1692e(11); and
 - Failing to disclose in all oral communications that ARS is a debt collector (d)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA SAN DIEGO DIVISION

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April 15, 2009 15:12:42

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USAO #.: 09CV0780

Judge..: JOHN A HOUSTON

Amount.:

Check#.: BC#4705

\$350.00 CK

Total-> \$350.00

FROM: KOBY V. ARS NAT. SVCS. DOES 1 ~ 25 CIVIL FILING